

Employer Status Determination
Minnesota Transportation Museum, Inc.

This is the decision of the Railroad Retirement Board with respect to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of Minnesota Transportation Museum, Inc. (MTM).

MTM is a non-profit corporation founded in the early 1960's operating a street car and rail museum. It operates a one mile street car line in Minneapolis and formerly operated a six mile former Burlington Northern branch line within Minnesota. MTM has no employees; all work for MTM such as track laying, restoration work, operation of cars and trains, etc., is performed by volunteers except for the occasional hiring of a contractor to do track work.

According to ICC Finance Docket No. 32146, September 3, 1992, a notice of exemption was filed for MTM to obtain trackage rights to conduct passenger operations over a line of the Wisconsin Central, Ltd. That exemption was granted effective September 5, 1992, and on that date MTM began passenger operations over a Wisconsin Central line of 39.4 miles between Osceola, Wisconsin, and Marine, Minnesota.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," in pertinent part, as follows:

The term 'employer' shall include--

(i) any express company, sleeping-car company, and carrier by railroad, subject to [the Interstate Commerce Act];

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *."

The Railroad Retirement Act covers any carrier by railroad subject to the Interstate Commerce Act. The Interstate Commerce Act

defines "carrier" in part as a "common carrier," and a "common carrier" as including "a rail carrier" (49 U.S.C. § 10102). A "rail carrier" is defined as a "person providing railroad transportation for compensation" ("person" is defined by incorporation of 1 U.S.C. §1 to include "corporations, companies, associations, firms, partnerships, societies, and joint stock companies"). Since MTM is providing railroad transportation for compensation in interstate commerce, the Board holds that MTM is a rail carrier employer under the Railroad Retirement Act effective September 5, 1992, the date on which it began operations in interstate commerce.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever

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C. 2039-93
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According to ICC Finance Docket No. 32146, September 3, 1992, a notice of exemption was filed for MTM to obtain trackage rights to conduct passenger operations over a line of the Wisconsin Central, Ltd. That exemption was granted effective September 5, 1992, and on that date MTM began excursion operations consisting of round trips over a Wisconsin Central line of 39.4 miles between Osceola, Wisconsin, and Marine, Minnesota. The excursion operation departs from Osceola and returns there: it does not board or disembark passengers elsewhere on that line and the ride offered is a 20-mile, 90-minute round trip.

MTM's operation of a tourist railroad does not constitute an operation in interstate commerce since it conducts only excursions of passengers and does not connect with interstate transportation. Accordingly, the Board holds that MTM is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever

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Mr. Byron D. Olsen
Felhaber Larson Fenlon & Vogt
1935 Piper Jaffray Tower
222 South Ninth Street
Minneapolis, Minnesota 55402-3337

In reply refer to
C. 2039-93

Dear Mr. Olsen:

Thank you for the information you provided in your letter of October 18, 1993.

The Railroad Retirement Board is interested in the Minnesota Transportation Museum, Inc. (MTM), with respect to its rail operation. The Board needs information in order to determine whether MTM is an employer covered under the Railroad Retirement and Railroad Unemployment Insurance Acts.

I trust that the foregoing responds to your question.

Sincerely,

Catherine C. Cook
General Counsel

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16 November 1993

Steve & Tom -

Olsen asked when I talked to him how MTM can be an employer when it has no employees; so to explain that the Board wants to determine whether MTM is an employer seems to me won't answer Olsen's question as to why the Board is interested in MTM. Therefore, I would add to the letter something like

It looks to me as if there might be some confusion as to the purpose of the letter to Olsen; he asked, in his letter which provided confirmation of the nature of the MTM rail route, why the Board was interested in MTM, a company without employees. The proposed letter to him represented an effort to answer this question. The draft of this letter was included with the drafts of the proposed Board decision, but it appears that it may not have been reviewed.

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